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MAR 17 1906
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 609. 214

FRED C. FISHER and CHARLES C. COHN,
on behalf of Felix Barcelon,
Plaintiffs in Error,
against

COLONEL DAVID J. BAKER, JR., and
Captain John Doe Thompson.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

MOTION TO ADVANCE.

COUDERT BROTHERS,
Attorneys for Appellant.

FREDERIC R. COUDERT,
Of Counsel.

C. G. BURGOYNE, Walker and Centre Streets, N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1905.

No. 609.

FRED C. FISHER and CHARLES C. COHN, on behalf of FELIX BARCELON, Plaintiffs in Error,

AGAINST

COLONEL DAVID J. BAKER, JR., and CAPTAIN JOHN DOE THOMPSON.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

MOTION TO ADVANCE.

And now, on the 19th day of March, 1906, comes Frederic R. Coudert, of counsel for the appellant above named, and moves this Honorable Court that the above-entitled cause be advanced upon the docket and set down for hearing upon such early day as shall be most convenient to the Court.

I.

This is a writ of error (Rec., p. 47) to the Supreme Court of the Philippine Islands bringing here for review a judgment denying an application for a writ of *habeas corpus* made by the petitioners Fisher and Cohn on behalf of Felix Barcelon,

said judgment being filed in the office of the Clerk of the Supreme Court of the Philippine Islands on the third day of October, 1905 (Rec., p. 45).

Plaintiff in error claimed that he was unlawfully detained and petitioned the Supreme Court of the Philippine Islands for a writ of *habeas corpus*, which writ was refused by the said Court on the ground that under an order of the Philippine Commission the right to the writ of *habeas corpus* had been suspended.

II.

The petition for the writ alleged that Felix Barcelon was detained and restrained of his liberty by John Doe Thompson, of the Philippine Constabulary, acting under and in pursuance of order of David J. Baker, Jr., Colonel of the Philippine Constabulary, at the Town of Batangas, in the Province of Batangas, in the Philippine Islands; that said detention and restraint were wholly without authority and further "that "there has not existed at any of the times in the petition "mentioned and does not now exist in said Province of "Batangas or in any part thereof, rebellion, insurrection or in-"vasion, or any of them, in any form or degree; and that all "of the courts of law organized and provided by law for the "Province of Batangas have been at all of the times herein-"above mentioned, in the full and complete exercise of their "functions without interruption of any nature or kind" (Rec., p. 2).

The answer to the petition for the writ of *habeas corpus* admitted the detention of said Barcelon, but denied

> "the right of this Court to inquire into the reasons therefor by virtue of the said resolution of the United States Philippine Commission and the proclamation of the Governor General issued by authority of the same suspending the privileges of the writ of *habeas corpus* in the Provinces of Cavite and Batangas" (Rec., p. 24).

III.

Section 5, of the Act of Congress of July 1, 1902 (Rec., p. 25), provides :

> "That the privileges of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion, insurrection or invasion the public safety may require it, in either of which events the same may be suspended by the President or by the Governor General, with the approval of the Philippine Commission, whenever during such period the necessity for such suspension shall exist."

The Supreme Court of the Philippine Islands has held (WILLARD, J., dissenting), that in view of said order of suspension, the writ would not issue and that the Court was without jurisdiction to inquire into the question of whether or not rebellion, insurrection or invasion in fact existed or whether the Courts were open and in their usual and normal operation.

No reference is made in the opinion of the Court to the case of *ex parte* Milligan, 4 Wall., 2, which undersigned counsel believes to be determinative of the question here involved.

IV.

The said petitioner is still in custody, and the question here involved is of great public interest and importance.

Counsel, therefore, respectfully moves this Honorable Court to advance the said case for argument and determination at an early date, in accordance with Rule 26, providing that criminal cases may be advanced by leave of the Court, upon the motion of either party, and also because this case "involves a matter of general public interest."

V.

I am authorized to say that the Solicitor General consents to this motion, and joins in my request that the case be advanced.

Dated New York, March 14, 1906.

FREDERIC R. COUDERT,
Of Counsel for Appellant.

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No. 214.

Supreme Court of the United States.

FRED C. FISHER and CHARLES C. COHN, on behalf of FELIX BARCELON,

Plaintiffs in Error,

against

COLONEL DAVID J. BAKER, JR., and CAPTAIN JOHN DOE THOMPSON,

Defendants in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for Plaintiffs in Error,
71 BROADWAY,
New York City, N. Y.

C. G. BURGOYNE, Walker and Centre Streets, N. Y.

IN THE

Supreme Court of the United States.

FRED C. FISHER and CHARLES C. COHN, on behalf of FELIX BARCELON, Plaintiffs in Error, AGAINST COLONEL DAVID J. BAKER, JR., and CAPTAIN JOHN DOE THOMPSON, Defendants in Error.	Brief for Plaintiffs in Error.

Statement of the Case.

This is a writ of error to review an order or judgment of the Supreme Court of the Philippine Islands denying an application for a writ of *Habeas Corpus*. A petition on behalf of Felix Barcelon, the prisoner, was presented on August 2d, 1905, and on the following day an order to show cause why the writ should not issue was granted, returnable August 4th, 1905. On the return day the respondents filed an answer which they subsequently amended. By their amended answer they admitted the detention and set up the following defenses:

A. That the court was without jurisdiction or authority to issue the writ because the privilege thereof had been suspended by the Governor by proclamation of January 31st, 1905, pursuant to the authorization of the Philippine Commission as expressed in their resolution of the same date.

B. Without waiving the question of jurisdiction the respondents also answered on the merits, and alleged

1st. That the petitioners were not authorized by Barcelon to act for him, and that Barcelon was "satisfied to remain with Captain Thomson," and

2d. That it was necessary to keep Barcelon in custody to protect him against intimidation.

The petitioners replied to this answer by producing a specific authorization from Barcelon approving of all their proceedings on his behalf.

On September 30, 1905, the Court rendered a decision and judgment denying the application on the ground of lack of jurisdiction or authority by reason of the suspension of the privilege of the writ, and declined to go into the merits or to consider the petitioners' allegation that no insurrection in fact existed at the time. This was by a divided court, Mr. Justice WILLARD dissenting in an able and vigorous opinion (Rec., p. 42). This judgment now comes before this court for review on writ of error.

Statement of Facts.

The facts material to a determination of this cause, as they appear from the record herein and from public documents of which this court will take judicial notice, are briefly as follows:

In the autumn of 1904 there was an outbreak of "ladronism" in the provinces of Batangas and Cavite. Bands of "*ladrones*," or robbers and outlaws, infested portions of these provinces, and raided outlying villages, plundering and ravaging. They proved too formidable for the native constabulary, and it was necessary to employ United States troops to extirpate them (See Report of Phil. Comm. for 1905, Part I., page 56). To aid the operations of the troops, the Civil Governor, in accordance with a resolution of the Philippine Commission, suspended the privilege of the writ of *habeas corpus* in the provinces of Cavite and Batangas, by proclamation dated January 31st, 1905 (Rec., pp. 10, 11).

So successful were the efforts of the authorities that on April 30, 1905, Colonel Baker, one of the defendants in error, being then in command of the Provisional District including the provinces in question, telegraphed to the Provincial Governor of Batangas, offering his congratulations "on the freedom of Batangas from ladronism." This despatch is contained in Gov. Aguilera's report to the Civil Governor (Phil. Comm. Report 1905, Part I., p. 173) and is printed in full as an appendix to

this brief (App. 1, p. 21). In this same report the Provincial Governor states under date of August 28th, 1905: "The most absolute tranquillity reigns throughout this province." On August 15, 1905, the Provincial Governor of Cavite reported: "Ladronism has for the present disappeared from the province; in any event it can be better handled by the regularly organized forces of the civil government (Phil. Comm. Rep. 1905, Part I., p. 216). By the middle of July, 1905, of all the *ladron* bands, "there remained only Felizardo, Montalon and De Vega, with perhaps 20 followers with guns" and the United States troops were withdrawn (Do., p. 58). This is confirmed by Colonel Baker's report to the Adjutant General of the Philippine Constabulary dated July 31, 1905. He says, after stating that "Sakay frequents Northern Rizal"—"excluding Sakay's band, there are only 15 outlaws with 13 guns at large in this district" (Do., part 3, p. 133).

Barcelon, on whose behalf this proceeding was brought, was a tenant of the Hacienda of one Pedro Roxas, against whom a prosecution was instituted, apparently on the charge of having given money to one Julian Ramos, a *ladron*. Barcelon was arrested, brought to Batangas, and examined as a witness in the preliminary investigation of the charge against Roxas in the Court of First Instance of the Province. On April 19, 1905, after the conclusion of his examination, he was ordered by the Court into the custody of the sheriff. On April 22, 1905, the preliminary investigation was concluded, and he was ordered by the court "*released and liberated of all restraint*" (Rec., p. 1). Thereupon he was further detained by the defendant in error, Capt. Thompson, acting under the orders of the other defendant in error, Col. Baker, and is still in such custody *although not charged with any offense whatever*. It is to be observed that at his examination in the Court of First Instance, Barcelon testified that a former statement of his (Rec., pp. 13–15) made out of court between his arrest and his examination, was false, and that he made it because compelled thereto by abuse and violence (Rec., p. 6). The defendants in error claim that he has since made a further statement, retracting his testimony in court and confirming his original declaration (Rec., pp. 10, 14–21) but this last statement was, like the first, made out of court and without counsel. It does not

appear that Barcelon is or has been at any time charged with any crime or offense, and his original arrest and detention were evidently solely to secure his attendance as a witness.

Specification of Errors.

The following errors in the determination of the Court below will be presented for consideration by this court.

I. The court erred in refusing to try as a question of fact the existence of a state of insurrection in the province of Batangas (2d Assignment of Error, Rec., p. 46).

II. The Court erred in holding that the Philippine Civil Governor and Commission have sole and absolute power to determine when the privilege of the writ of *habeas corpus* may be suspended (3d Assignment of Error, p. 46).

III. The court erred in holding that the action of the Civil Governor and Philippine Commission in suspending the privilege of the writ of *habeas corpus* in Batangas was not subject to review in the event that insurrection, rebellion or invasion did not as a fact exist in said Province (4th Assignment of Error, Rec., pp. 46, 47).

IV. The court erred in denying petitioner's application and refusing to issue the writ (1st Assignment of Error, Rec., p. 46).

Brief of the Argument.

The argument to be made on behalf of the plaintiffs in error is briefly as follows :

I. The procedure herein was regular and the whole case is properly before this Court for determination.

II. Under the Philippine Civil Government Act the power of the Civil Governor and Philippine Commission to suspend the privilege of the writ of habeas corpus is not absolute and discretionary, but is limited to cases in which

some one of the required conditions precedent—"rebellion, insurrection or invasion"—actually exists.

III. The existence of a state of "rebellion, insurrection or invasion" is a question of fact to be judicially determined by the Court.

IV. As a matter of fact and as appears from the Record herein and from public documents, there was no state of "rebellion, insurrection or invasion" in the Province of Batangas at the time of the application and decision below.

V. The detention of the prisoner is a deprivation of liberty without due process of law.

VI. Under the Constitution, the power to suspend the privilege of the writ of *habeas corpus* rests in Congress, and cannot be delegated to the Philippine Civil Governor and Commission.

POINTS.

I.

The procedure herein was regular and the whole case is properly before this Court for determination.

By the Philippine Code of Procedure (Act No. 190, Acts of Phil. Comm.) the petition for a writ of *habeas corpus* may be made either by the prisoner "or by some person for him" (Code, Sect. 527). The authority of the petitioners herein sufficiently appears from their Reply (Rec., p. 22), and although it was questioned by the respondents below, it was recognized by the Court and is not in issue here.

All the facts necessary for a determination of the cause appear by the answering affidavits as fully as they would upon a

return to an actually issued writ. In such a case the proceeding can be determined as well upon the return of an order to show cause why the writ should not issue, as it could upon a return to the writ itself. Such procedure is customary, and has been expressly approved by this court.

See *Ex parte* Yarbrough, 110 U. S., 651, at 653.
Ex parte Milligan, 4 Wall., 2, at 110.

The absolute refusal of the writ is a final judgment, since it completely terminates the proceeding. The cause involves a statute of the United States (the Philippine Bill of Rights, contained in Sect. 5 of the Civil Government Act) and also the United States Constitution, and the jurisdiction of this court is thus placed beyond question under Section 10 of the same Act. Sufficient facts appear in the Record to authorize this court to pass upon the merits of the case, and order the prisoner's discharge, or, in any event, to direct the Court below to issue the writ and determine the case on its merits there.

II.

Under the Philippine Civil Government Act the power of the Civil Governor and Philippine Commission to suspend the privilege of the writ of habeas corpus is not absolute and discretionary, but is limited to cases in which some one of the required conditions precedent—"rebellion, insurrection or invasion"—actually exists.

Many of the constitutional guarantees of life, liberty and property have been expressly re-enacted by Congress in respect to the Philippines in Section 5 of the Civil Government Act, which is in effect a Philippine Bill of Rights. One of these provisions relates to *habeas corpus*, and reads as follows:

> "That the privilege of the writ of *habeas corpus* shall not be suspended, unless where in cases of rebellion, in-

surrection or invasion the public safety may require it, in either of which events the same may be suspended by the President or by the governor with the approval of the Philippine Commission, wherever during such period the necessity for such suspension shall exist" (32 U. S. Stat., p. 692).

This is simply a re-enactment of the corresponding provision in the United States Constitution with certain additional limitations. The provision in the Constitution reads as follows: "The Privilege of the Writ of *Habeas Corpus* shall not be suspended unless where in cases of Rebellion or Invasion the public Safety may require it" (U. S. Const., Art. I., Sec. 9). As will be seen at a glance, the Philippine Act merely adds "insurrection" as a further ground of suspension, and then declares affirmatively by whom the suspension may be made, and that it may be made effective wherever necessary during the continuance of the conditions. It should be observed that "*whenever*" in the quotation from the Act in the opinion of the Court below (Rec., p. 25) is an error.

Since this is a re-enactment of a constitutional provision, its meaning and effect must be determined by the construction already placed upon such provision. A brief historical sketch of the constitutional provision thus becomes pertinent. It is contained in the body of the instrument and not in the amendments, and it was accordingly the subject of debate at the Constitutional Convention. As first proposed by Mr. Pinkney on August 20th, 1787, the provision read as follows:

> "The privileges and benefit of the Writ of *Habeas Corpus* shall be enjoyed in this Government in the most expeditious and ample manner, and shall not be suspended by the Legislature except upon the most urgent and pressing occasions, and for a limited time not exceeding months."
>
> Doc. Hist. U. S. Const. Vol. III., p. 565.

On August 28, 1787 the following debate took place:

> "Mr. Pinkney, urging the propriety of securing the benefit of the *habeas corpus* in the most ample manner ("for that purpose" stricken out) moved "that it should not be suspended but on the most urgent occasions, and then only for a limited time not exceeding twelve months."

"Mr. Rutledge was for declaring the *Habeas Corpus* inviolable. He did not conceive that a suspension could be necessary at the same time through all the States.

"Mr. Govr. Morris moved ("to add" stricken out) that "the privilege of the writ of *Habeas Corpus* shall not be suspended, unless where in cases of Rebellion or invasion the public safety may require it."

"Mr. Wilson doubted whether in any case a suspension could be necessary, as the discretion now exists with judges, in most important cases to keep in Gaol or admit to Bail.

"The first part of Mr. Govr. Morris' motion to the word "unless" was agreed to *nem. con.* On the remaining part;

"N. H. Ay. Mass. Ay, Ct. Ay, Pa. Ay, Del. Ay, Md. Ay, Va. Ay, N. C. No., S. C. No, Ga. No."

do. pp. 628-629.

The only change made by the Committee of revision was to substitute "when" for "where" after "unless,"

do. p. 726.

How this provision was regarded by the founders of the Republic strikingly appears by a letter from Thomas Jefferson to James Madison, dated in Paris, July 31, 1788, while the Constitution was being acted upon by the States. An extract therefrom will be found in the appendix to this brief (App. 2, p. 21). Jefferson vigorously controverts the necessity of ever suspending the privileges of the writ, and it appears from his letter and from the debate above quoted that the object of the provision was to prevent suspension at mere discretion, whether of the executive or the legislature, and avert the abuses of which the mother country had afforded so shameful an example.

A consideration of the history of the suspensions of the privilege of the writ in England, by a Parliament unfettered by constitutional restrictions, shows how well founded was Jefferson's contemporary criticism, and demonstrates that a discretionary power of suspension is not a safeguard of the State, but an engine of tyranny and oppression (See May's Constitutional History of England, Vol 2, pp. 252-259) App V p. 24

Moreover, the English Suspension Acts applied only to persons charged with high treason or treasonable practices (See Dicey's Law of the Constitution, p. 225).

The privilege of the writ has never been suspended by the Federal Government in this country except during the Civil War. The power of the President to effect the suspension being open to question, and having been denied in the Merryman Case (17 Fed. Cas., No. 9487), Congress passed the Act of March 3d, 1863 (12 U. S. Stat., p. 755), providing "That, *during the present rebellion*, the President of the United States, whenever in his judgment the public safety may require it, is authorized to suspend the privilege of the writ of *habeas corpus* in any case throughout the United States, or any part thereof."

This Act, however, carefully protected the liberties of the individual, for it went on to provide for the certification to the United States Courts, at regular intervals, of the names of all prisoners (not prisoners of war) held under Executive order, and their discharge if not indicted for some definite offense by the next Grand Jury. Moreover, the Act limited this power of suspension to the period of the Rebellion, and as soon as that was over it expired by its own limitation.

When Civil Government was established in the Philippines, this constitutional guarantee of personal liberty was expressly bestowed upon the inhabitants, and the power to suspend it was delegated by Congress to the President of the United States, or the Governor of the Philippines with the approval of the Commission. But this power is no more absolute and discretionary in the Philippines than it is in the United States. It is only granted in cases of rebellion or invasion, as in the United States, and in the further case of insurrection—a lesser grade of rebellion. "During such period" of rebellion, insurrection or invasion the suspension may be made "wherever" (viz., in whatever part or parts of the Islands) the necessity therefor shall exist. In other words, during the continuance of the rebellion, insurrection or invasion, the President or the Governor is to judge whether the necessity for a suspension exists, and to what Provinces it should apply, but unless the condition exists, the power does not come into being. It is like an estate limited upon a condition precedent. Otherwise the limiting words in the statute are mere verbiage. By whom the existence of the condition is to be determined will be considered under the next point.

III.

The existence of a state of "rebellion, insurrection or invasion" is a question of fact, to be judicially determined by the Courts.

This proposition is the *crux* of the case. If it is true, there must be a reversal, since the Court below expressly held that it had no power to enquire into this question, and that the proclamation of the Civil Governor was conclusive. If it is not true, then, under the Civil Government Act, the prisoner can have no relief by *habeas corpus*, so long as it pleases the authorities to keep up the fiction of an insurrection, and to detain him in custody.

Our contention is this: The suspension of the privilege of the writ of *habeas corpus* is an exercise of martial law. Martial law cannot be declared or enforced in a time when or place where peace prevails. The principal test of peace or war is whether or not the courts are open and performing their functions unhindered. This is the doctrine of the Milligan Case, 4 Wall., 2.

In considering whether the military commission by which Milligan was tried had any jurisdiction or power in the premises, the Court held "Martial rule can never exist where the Courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war" (*id.*, p. 127). The Court took judicial notice "that in Indiana the Federal authority was always unopposed, and its courts always open to hear criminal accusations and redress grievances" (*id.*, p. 121), and judicially determined as a fact that war did not exist in Indiana so as to justify government by martial rule. Such rule, the Court held, can only be administered when the courts are "actually closed" and "on the theatre of active military operations, where war really prevails", and if such government is continued "after the courts are reinstated" or away from the locality of actual war, it is "a gross usurpation of power", and "mere lawless violence." This case is not merely good law but sound political science. Even the dissenting opinion only went to the extent of asserting a power in Congress, in case of civil or foreign war, to de-

clare martial law and authorize military trials in districts not included in the theatre of actual hostilities.

The best English opinion is to the same effect.

See Extracts from Dicey and Pollock, Appendix 4, p. 23 of this Brief.

In the case at bar the courts were open, and the prisoner himself had been called as a witness in an ordinary criminal prosecution, then pending.

This court has never held that during a suspension of the privilege of the writ of *habeas corpus*, the court to which an application for such writ may be made is without power to inquire into the facts upon which the right to suspend is conditioned, or that a declaration that such facts exist contained in a proclamation ordering the suspension is conclusive and irrebuttable at any time thereafter. Such a doctrine would lead directly to despotism, and would make it possible for an unscrupulous government completely to set at naught the constitutional guarantee against deprivation of liberty except by due process of law. If the proclamation is conclusive and the court can look no further into the facts, then the facts become immaterial, the power of suspension becomes absolutely discretionary, and the conditions imposed upon its exercise become mere idle words, to be disregarded by any administration willing to proclaim that an insurrection exists.

The Idaho case (*In re* Boyle, 45 L. R. A., 832) cited in the opinion below (Rec., pp. 33, 34) is, in the first place, obviously not controlling here, and, in the second place, not at all in point. The Idaho statute there considered expressly empowered the Governor, when "satisfied" that ordinary legal process was unenforceable, to proclaim a given locality in "a state of insurrection," and thus to put such locality under martial rule (See Statute in Appendix 3 to this brief, p. 22). No such power is conferred by the Philippine Civil Government Act, either expressly or by any necessary implication.

The Court below cites a large number of authorities in support of the doctrine "that whenever the Constitution or a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, such person is to be considered the sole and exclusive judge of the existence of those facts." Since the proposition, as so stated,

is not open to serious question, it would be a waste of time to review in detail the authorities cited in support thereof. Our contention is, however, that the Statute in question does not confer a discretionary power of suspension to be exercised by the Civil Governor (with the approval of the Commission) "upon his own opinion" of the existence of a state of rebellion, insurrection or invasion, but only upon his own opinion of the *necessity* for such suspension, *provided the required jurisdictional facts actually exist.*

Moreover, the cases cited relate to some executive act to be performed by an officer in the regular administration of his office. The following may be mentioned as examples:

The calling out of the militia in case of invasion, &c.

Martin vs. Mott, 12 Wheat., 19.
Vanderheyden vs. Young, 11 Johnson, 150.

The exclusion of an alien by the immigration authorities.

Nishimura Ekiu vs. U. S., 142 U. S., 651.
Lem Moon Sing vs. U. S., 158 U. S., 538.

The dispensing with advertising for a government contract in an emergency requiring immediate delivery.

U. S. vs. Speed, 8 Wall., 77.

The convening of a general court-martial with more than one-half of its members junior to the officer to be tried, where the exigencies of the service so require.

Mullan vs. U. S., 140 U. S., 240.
Swaim vs. U. S., 165 U. S., 553.

The granting of a reissued patent.

Allen vs. Blunt, 3 Story, 742; 1 Fed. Cas., No. 216.

The sale on short notice of perishable property in the custody of a collector.

Gould vs. Hammond, 1 McAll., 235; 10 Fed. Cas., No. 5638.

The detention of an enlisted marine whose term of service expires while on a cruise.

Wilkes vs. Densman, 7 Howard, 89.

There is a clear distinction between such cases, where an executive officer is acting within his usual sphere, and the case of a suspension of the privilege of the writ of *habeas corpus*, the one instance in which the executive or legislative department is allowed to step out of its sphere, and interfere with the usual processes of the judicial department. Doubtless the three departments are co-ordinate, and each in its own sphere of equal power and authority, but under our system of government it is within the sphere of judicial power to sit in review on the validity, though not on the wisdom, of legislative and executive acts. If a legislative act is unconstitutional, the courts can so determine and thus nullify it. If an executive act is contrary to statute or constitution, the courts can so determine and thus make it of no effect. Since this is so in regard to acts within the apparent sphere of legislature or executive, much more must it be so in a case where legislature or executive seeks to deprive the courts of the one legal process by which alone they can adequately protect individual liberty. Granted that in certain cases legislature or executive may have such power ; granted that where the power in fact exists, the wisdom or propriety of its exercise cannot be judicially reviewed ; nevertheless it surely must be within the jurisdiction of the Court whose hands are thus sought to be tied to enquire judicially into the existence of the facts on which the power to tie them is conditioned.

The case of Luther vs. Borden, 7 How., 1, on which the court below laid much stress, merely determines that where a *State* has declared martial rule within its borders, it is not for the Federal Government to interfere.

The court below also appears to have considered that simply as evidence the resolution of the Philippine Commission and the proclamation of the Governor were conclusive and irrebuttable. Various authorities are cited to support the proposition that " the state of war or peace is not a question *in pais* for courts to determine," but " a legal fact, ascertainable only from the decision of the political department " (Rec., p. 36). An examination of the authorities show that this only applies to *foreign* war or its equivalent. It is true that the decision of legislature and executive is conclusive upon

the courts upon questions of war or belligerency with a *foreign* power, or between *foreign* powers.

Rose vs. Himely, 4 Cranch., 241.
The Santissima Trinidad, 7 Wheat., 283.
The Nuestra Senora, 4 Wheat., 497.

So of the recognition of new governments.

U. S. vs. Palmer, 3 Wheat., 610.
Gelston vs. Hoyt, 3 Wheat., 246.
The Divina Pastora, 4 Wheat., 52.

So of boundary questions with foreign nations.

Foster vs. Neilson, 2 Pet., 253.

So in fact of all matters involving the foreign relations of the Government, which are expressly devolved upon the legislature and executive.

This is not the rule in cases of domestic war or insurrection (Fourteen Diamond Rings vs. United States, 183 U. S., 176; Lincoln vs. United States, 197 U. S., 419).

The rules as to foreign war were to a considerable degree extended to cover questions arising out of the great Civil War, but it was because the Civil War was of such magnitude as to be equivalent to a foreign war. In the very case in which this court first sanctioned this doctrine (Prize Cases, 67 U. S. 635) the court laid down the rule that the true test of the existence of a civil war is this: "When the regular course of justice is interrupted by revolt, rebellion, or insurrection *so that the courts of justice cannot be kept open, civil war exists*," precisely the same test as that laid down in the Milligan case *(supra)* for the justification of martial rule.

Cases are also cited by the court below relating to the manner in which the date of the termination of the Civil War was determined by the courts by reference to the President's proclamation. One of these very cases, however (U. S. vs. 1500 Bales of Cotton, 27 Fed. Cas. No. 15958) expressly recognized the possibility of other proof of a cessation of hostilities, and disclaimed any intention of holding "that legislation or proclamations are indispensable to terminate the legal condition of public political hostility." When the same question was before this court, its language on the subject was very guarded. In U. S. vs. Anderson 9 Wall., 56,

this court, after referring to the President's proclamation of August 20, 1866, declaring the restoration of peace, and to an Act of Congress of March 2d, 1867, adopting that date in fixing the pay of the army, said, by Mr. Justice DAVIS (at p. 71) "As Congress, in its legislation for the army, has determined that the rebellion closed on the 20th day of August, 1866, there is no reason why its declaration on this subject should not be received as settling the question wherever private rights are affected by it. That day will, therefore, be accepted as the day when the rebellion was suppressed, as respects the rights intended to be secured by the Captured and Abandoned Property Act." There is no decision in this court that an executive or legislative declaration that rebellion or insurrection exists is conclusive and irrebuttable evidence of the fact itself, and of its continuance until a contrary declaration from the same source. It is doubtless *admissible* evidence, but that does not make it uncontrovertible.

In other words, legislature and executive can neither make a state of insurrection exist, nor conclusively prove its existence, by a mere *ipse dixit*.

IV.

As a matter of fact and as appears from the record herein and from public documents, there was no state of "rebellion, insurrection or invasion" in the Province of Batangas at the time of the application and decision herein.

As there is no claim that either "rebellion" or "invasion" existed, it is sufficient to consider the question of "insurrection." The word is defined in the Century Dictionary as follows: "The act of rising against civil authority or governmental restraint; specifically the armed resistance of a number of persons to the power of the State; incipient or limited rebellion. * * * An *insurrection* goes beyond *sedition* in that it is an actual rising against the government, in discontent,

in resistance to a law, or the like. * * * *Rebellion* goes beyond *insurrection* in aim, being an attempt actually to overthrow the government, while an *insurrection* seeks only some change of minor importance."

It appears from the very Resolution and Proclamation on which the suspension was founded that the disorders in Cavite and Batangas were not in the nature of an uprising to overthrow or change the government, but were merely depredations by bands of robbers for the purpose of plunder. The very definition of *ladron* is "thief, robber, highwayman, cutpurse" (Velasquez, Span.-Eng. Dict.). The robber bands were stated to be "in open insurrection against the constituted authorities" (Rec., p. 11), but so is every highwayman. Such facts are not enough to constitute an "insurrection" worthy to be ranked with rebellion and invasion as a cause for suspending the privilege of the writ of *habeas corpus*. As appears from the definition of the word, insurrection must have a political aspect. Mere criminality and disorder do not make an insurrection.

This is expressly recognized in the Report of the Philippine Secretary of Commerce and Police. He says (Phil. Com. Rep., 1905, Part 3, p. 8): "It is characteristic of criminals never to own themselves to be outlaws, living by what they could plunder. * * * Leading Filipinos in Manila and in the provinces affected, the provincial governors and men who were distinguished in the insurrection against the United States Government during the years from 1899 to 1902, declared that there was no real political significance attached to these ladrones; that the men in charge were neither men of weight nor standing in the Filipino community, and that the purpose of this movement was purely personal aggrandizement and loot and their methods were intimidation and theft."

However serious the disorder may have been at the time of the Proclamation, it clearly appears from the official documents cited in the Statement of Facts that prior to the application and decision herein, Batangas was free from ladronism, and that in the whole Provisional District under Col. Baker's command (aside from Sakay's band in Northern Rizal), there were only 15 outlaws with 13 guns at large. Can such a mere handful of criminals, such a Falstaff's army of "rogues in buckram" constitute an insurrection, and justify

the suspension of the privilege of the writ of *habeas corpus?* These are public facts; this court will take judicial notice of them; the Court below should have done so; and yet it held itself concluded by the mere inadequate recitals of a Resolution and Proclamation, then more than six months old. The courts were open, the captured *ladrones* were being prosecuted by the ordinary criminal procedure, the present prisoner had given testimony in such a prosecution, and had been ordered discharged by the court in which it was pending. The "insurrection" was at that time an official fiction of the most transparent type, and the court below should have inquired into the facts and so found.

The allegation in the petition that insurrection did not then exist in Batangas (Rec., p. 2) was not even denied by the answer.

V.

The detention of the prisoner is a deprivation of liberty without due process of law.

The Civil Government Act expressly extends and makes applicable to the Philippines the constitutional guarantee against the deprivation of life, liberty or property without due process of law (Sec. 5). Even without such express extension, this fundamental constitutional limitation would clearly apply and control in all territory under the dominion of the United States. *There is no suggestion in the record that Barcelon is charged with any offense whatever*, or even that his further attendance as a witness will be required. He is not held under any legal process, but by mere *force majeure*, and he was expressly ordered to be discharged from custody by the Court of First Instance in which he testified. He is thus admittedly deprived of his liberty, not merely without *due* process of law, but without even any semblance or color of *any* process of law whatsoever. Unless the hands of all the courts are absolutely tied by the Resolution and Proclamation of the Commission and

Governor, he should receive at the hands of this Court the discharge from custody to which he is so manifestly entitled.

The suggestion that he is a voluntary guest of Capt. Thompson's does not require serious discussion. If such is the fact, his discharge from custody need not disturb the relation of host and guest. A guest may stay even when he is free to leave. This aspect of the case strongly suggests the polite formula of the *lettres de cachet*, by which the kings of France filled the Bastille. These instruments were in the form of a private letter from his Most Christian Majesty to the Governor of one of his royal castles to receive such an one into such castle and keep him there until further order (La Grande Encyclopedie, Vol. 5, p. 613, Funck Brentano, Archives de la Bastille, *passim*). That on the face of the matter the unhappy prisoner was deemed a royal guest did not go very far to alleviate his imprisonment. It is for this Court now to determine whether the civil government supposed to have been bestowed upon the Philippines means civil liberty or Bourbon despotism.

Another phase of the matter is also to be considered. It appears that prior to his testimony in court, Barcelon, while in custody of the constabulary, made a declaration adverse to the defendant in the then pending investigation. In court he denied this former declaration, and swore that it was extorted by violence ("Holy Virgin, how they beat me", Rec., p. 6). After his examination in court, while illegally held in custody, he reverted to his first declaration. It is to be noted that he was then out of the protection of the court, and surrounded by hostile officials. It is quite immaterial which of his conflicting declarations was true, but the fact that it would be possible, by detaining a witness in custody from which no *habeas corpus* could relieve him, to bring pressure to bear on him and make him retract testimony given under the protection of the Court, is a conclusive argument against a *discretionary* power in any one to suspend the privilege of the writ.

VI.

Under the Constitution, the power to suspend the privilege of the writ of habeas corpus rests in Congress, and cannot be delegated to the Philippine Civil Governor and Commission.

The argument thus far has proceeded upon the theory that under the proper construction of the statute itself, the Court below was empowered to enquire and decide whether an insurrection in fact existed. We now desire to call to the attention of this Court the further and broader argument that the power of Congress under the Constitution to delegate to any subordinate executive or legislative authority a general power to suspend the privilege of the writ of *habeas corpus* is more than doubtful.

It is to be remembered that the Constitutional provision in regard to *habeas corpus* is contained in the Article setting forth the powers of Congress, and that no right to delegate the power is granted either expressly or by implication.

We do not intend to reopen discussion of any matters covered and foreclosed by the decisions in the various Insular cases. That the Constitutional clauses as to uniformity of duties and as to indictments and trials by juries are not applicable to legislation for the unincorporated insular possessions has now been declared to be the law of the land. It has been held, however, that certain portions of the Constitution may be applicable to such legislation, and it is well recognized that where the Constitution does apply it is supreme and controlling (Rasmussen vs. U. S., 197 U. S., 516). The question still remains open as to what these *applicable* Constitutional limitations may be. As stated by Mr. Justice DAY in the case of Dorr vs. United States, 195 U. S., 138, p. 149:

> "We conclude that the power to govern territory, implied in the right to acquire it, and given to Congress in the Constitution in Article IV., § 3, to whatever other limitations it may be subject, *the extent of which must be decided as questions arise*, does not require that body to enact for ceded territory, not made a part of the United States by Congressional action, a system of laws which shall include the right of trial by jury, and that the

> Constitution does not, without legislation and of its own force, carry such right to territory so situated."

None of the Insular Cases have decided whether or not the *habeas corpus* clause of the Constitution applies to these new possessions. We respectfully submit that it does apply since the "privilege of *habeas corpus*," while doubtless procedural in form, is really a substantive right of the most important and sacred character—the right to a judicial enquiry into the cause of any individual's detention.

As the Courts of the Philippine Islands at the time of the passage of this Statute (July, 1902) were authorized to issue writs of *habeas corpus* (*In re* Calloway, 1 Philippine Reports, 11), we contend that Congress could not suspend such privilege save in the way and to the extent provided for in the Constitution. While it is not necessary to moot the question, much discussed in some of the Civil War cases, whether Congress or the President has power to suspend the privilege of the writ, it is clear that, under the Constitution, neither Congress nor the President, acting jointly or severally, can delegate that power to any subordinate executive officer or legislative body.

Upon this theory, the attempted delegation to the Philippine Civil Governor and Commission was wholly void, and the attempted suspension relied on below was a mere nullity.

CONCLUSION.

Both under the Philippine Civil Government Act and under the Constitution, the judgment should be reversed and the cause remanded, with instructions to the Court below to discharge the prisoner, or at least to issue the writ and hear the cause on the merits.

Dated October 1st, 1906.

Respectfully submitted,

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for Plaintiffs-in-error,
71 Broadway,
N. Y.

Appendix 1.

LIPA, BATANGAS, April 30, 1905.

GOVERNOR AGUILERA,
Batangas.

I much regret that neither my work nor health will permit me to be present at your meeting of presidentes. Please, congratulate them for me on the freedom of Batangas from ladronism. While the constabulary and scouts have done hard and brilliant work, this striking result would not have been accomplished in less than four months had it not been for the patriotic intelligence and steady assistance of most of the principales, Batangas province, who realize that their country would most prosper and the ideal of their people be the best realized through the enforcement by the people themselves of peace and good order. In the final struggle with outlawry on which we are now entering I have full confidence that Batangas will destroy or capture any Cavite or Laguna ladrone who may be driven or seek refuge within her borders.

BAKER,
Assistant Chief, Commanding.

(Rep. Phil. Com. 1905, Part 1, p. *173*).

Appendix 2.

EXTRACT FROM LETTER OF THOMAS JEFFERSON TO JAMES MADISON.

PARIS, July 31st, 1786.

* * * "why suspend the Hab. Corp. in insurrections and rebellions? the parties who may be arrested may be charged instantly with a well defined crime. of course the Judge will remand them. if the publick safety requires that the government should have a man imprisoned on less probable testimony in these than in other emergencies; let him be

taken and tried, retaken and retried, while the necessity continues, only giving him redress against the government for damages. Examine the history of England; see how few of the cases of the suspension of the Habeas Corpus laws have been worthy of that suspension. they have been either real treasons wherein the parties might as well have been charged at once, or sham plots where it was shameful they should ever have been suspected. yet for the few cases wherein the suspension of the hab. corp. has done real good, that operation is now become habitual, and the minds of the nation almost prepared to live under its constant suspension."

Doc. Hist. of the Const, Vol. IV. pp. 824-5.

Appendix 3.

EXTRACTS FROM IDAHO STATUTES.

Constitution.

Art. I. Sec. 5. The privilege of the writ of *habeas corpus* shall not be suspended unless, in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law.

Art. IV, Sec. 4. The governor shall be commander-in-chief of the military forces of the State, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, to suppress insurrection or to repel invasion.

Penal Code.

Sect. 5164. When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has exerted, and has not been sufficient to enable the officer, having the process, to execute, he may, on the application of the officer, or of the district attorney or probate

judge of the county, by proclamation to be published in such papers as he shall direct, declare the county to be in a state of insurrection, and may order into the service of the State, such number and description of volunteer or uniform companies, or other militia of the State, as he shall deem necessary, to serve for such time, and under the command of such officer or officers as he shall direct.

1887 R. S., Sec. 7406, 1864, 1st Sess., p. 240, Sec. 96.

SECT. 5166. The governor may, when he thinks proper, revoke the proclamation authorized by the last section, or declare that it shall cease at the time and in the manner directed by him.

Appendix 4.

EXTRACTS FROM ENGLISH AUTHORITIES.

DICEY, THE LAW OF THE CONSTITUTION, 6TH ED.

P. 509. "From the nature of martial law follow four conclusions :

"*First, martial law cannot exist in time of peace.*

This is on all hands admitted.

What, then, is the test for determining whether a state of peace exists at a given time, in a given part of England, say London ?

The answer is that no unfailing test can be found ; the existence of a state of peace is a *question of fact to be determined in any case before the courts in the same way as any other such question.*"

"WHAT IS MARTIAL LAW" by Sir Frederick Pollock, Law Quarterly Review, Vol. 18 (1902) 152.

P. 156. "The justification of any particular act done in a state of war is ultimately examinable in the ordinary courts, *and the prior question whether there was a state of war at a given time and place is a question of fact.*"

Appendix V.

The practical teachings of history generally and especially that of England in the 18th century are of more value in the interpretation of our federal constitution than any amount of mere theoretical reasoning or speculative political philosophy The Constitution is in major part an outgrowth of English legal development and cannot be read intelligibly save in the light of English history.

This is especially true of all matters therein contained relating to the great fundamental "liberties of the subject." It was to guard against the abuses that had occurred in England and to crystallize into permanent, immutable form rights which had been there so recently and so hardly won, that not only the Bill of Rights but the *Habeas Corpus* clause were placed in the Constitution.

The object of this appendix is to give in concise and authoritative form a history of the suspension acts in England with a view to showing the abuse that arose from the unlimited power of Parliament in this respect.

It is evident that this danger must have been in the minds of the framers of the Constitution and led to the limitation upon the power to suspend the writ.

It is obvious, however, that a self limitation is no limitation and that if the body suspending the writ can itself determine the conditions upon which its jurisdiction depend, the limitation becomes merely blank paper. The framers evidently meant that these limitations should be practical limitations and that a suspension could not take place until certain jurisdictional facts existed. The existence of these facts, if the check were to be effective, must necessarily be determinable as are other justiciable facts.

The following quotation seems to us to throw clear light upon the evils which the framers of the Constitution desired to guard against as well as to indicate the soundness of the view propounded by this Court in the great Milligan case to the effect that martial law should not prevail where the courts are open and in ordinary operation.

Mr. May, the highest authority on the Modern Constitutional History of England, gives the following statement in

regard to the Suspension Acts which statement we herewith quote in full.

May's Constitutional History of England, Vol. II., pp. 252-259.

"The writ of *Habeas Corpus* is unquestionably the first security of civil liberty. It brings to light the cause of every imprisonment, approves its lawfulness or liberates the prisoner. It exacts obedience from the highest courts. Parliament itself submits to its authority. No right is more justly valued. It protects the subject from unfounded suspicions, from the aggressions of power and from abuses in the administration of justice. Yet this protective law, which gives every man security and confidence in times of tranquility, has been suspended again and again in periods of public danger or apprehension. Rarely, however, has this been suffered without jealousy, hesitation and remonstrance; and whenever the perils of the state have been held sufficient to warrant this sacrifice of personal liberty, no minister or magistrate has been suffered to tamper with the law at his discretion. Parliament alone, convinced of the exigency of each occasion, has suspended for a time the rights of individuals in the interests of the state.

The first years after the Revolution were full of danger. A dethroned king, aided by foreign enemies and a powerful body of English adherents, was threatening the new settlement of the crown with war and treason. Hence the liberties of Englishmen, so recently assured, were several times made to yield to the exigencies of the state. Again, on occasions of no less peril—the rebellion of 1715, the Jacobite conspiracy of 1722 and the invasion of the realm by the Pretender in 1745—the *Habeas Corpus* Act was suspended. Henceforth, for nearly half a century, the law remained inviolate. During the American war, indeed, it had been necessary to empower the king to secure persons suspected of high treason, committed in North America or on the high seas, or of the crime of piracy; but it was not until 1794 that the civil liberties of Englishmen, at home, were again to be suspended. The dangers and alarms of that dark period have already been recounted. Ministers, believing the state to be threatened by traitorous conspiracies, once more sought power to countermine treason by powers beyond the law.

Relying upon the report of a secret committee, Mr. Pitt moved for a bill to empower His Majesty to secure and detain persons suspected of conspiring against his person and government. He justified this measure on the ground, that whatever the temporary danger of placing such power in the hands of the government, it was far less than the danger with which the

constitution and society were threatened. If ministers abused the power intrusted to them, they would be responsible for its abuse. It was vigorously opposed by Mr. Fox, Mr. Grey, Mr. Sheridan, and a small body of adherents. They denied the disaffection imputed to the people, ridiculed the revelations of the committee, and declared that no such dangers threatened the state, as would justify the surrender of the chief safe guard of personal freedom. This measure would give ministers absolute power over every individual in the kingdom. It would empower them to arrest, on suspicion, any man whose opinions were obnoxious to them,—the advocates of reform, even the members of the parliamentary opposition. Who would be safe, when conspiracies were everywhere suspected, and constitutional objects and language believed to be the mere cloak of sedition? Let every man charged with treason be brought to justice: in the words of Sheridan, "where there was guilt, let the broad axe fall;" but why surrender the liberties of the innocent?

Yet thirty-nine members only could be found to oppose the introduction of the bill. Ministers, representing its immediate urgency, endeavored to pass it at once through all its stages. The opposition, unable to resist its progress by numbers, endeavored to arrest its passing for a time, in order to appeal to the judgment of the country; but all their efforts were vain. With free institutions, the people were now governed according to the principles of despotism. The will of their rulers was supreme, and not to be questioned. After eleven divisions, the bill was pressed forward as far as the report, on the same night; and the galleries being closed, the arguments urged against it were merely addressed to a determined and taciturn majority. On the following day, the bill was read a third time and sent up to the Lords, by whom, after some sharp debates, it was speedily passed.

The strongest opponents of the measure, while denying its present necessity, admitted that when danger is imminent, the liberty of the subject must be sacrificed to the paramount interests of the state. Ringleaders must be seized, outrages anticipated, plots disconcerted, and the dark haunts of conspiracy filled with distrust and terror. And terrible indeed was the power now intrusted to the executive. Though termed a suspension of the *Habeas Corpus* Act, it was, in truth, a suspension of Magna Charta,[2] and of the cardinal principles of the common law. Every man had hitherto been free from imprisonment until charged with crime by information upon oath; and entitled to a speedy trial, and

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[2] "*Nullus liber homo capiatur aut imprisonetur, nisi per legale judicium parium suorum.*" * * * "*Nulli negabamus, nulli differemus justiciam.*"

the judgment of his peers. But any subject could now be arrested on suspicion of treasonable practices, without specific charge or proof of guilt; his accusers were unknown; and in vain might he demand public accusation and trial. Spies and treacherous accomplices, however circumstantial in their narratives to secretaries of state and law officers, shrank from the witness-box; and their victims rotted in jail. Whatever the judgment, temper and good faith of the executive, such a power was arbitrary, and could scarcely fail to be abused.[3] Whatever the dangers by which it was justified—never did the subject so much need the protection of the laws as when government and society were filled with suspicion and alarm.

Notwithstanding the failure of the state prosecutions, and the discredit cast upon the evidence of a traitorous conspiracy on which the Suspension Act had been expressly founded, ministers declined to surrender the invidious power with which they had been intrusted. Strenuous resistance was offered by the opposition to the continuance of the act; but it was renewed again and again, so long as the public apprehensions continued. From 1798 to 1800, the increased malignity and violence of English democrats, and their complicity with Irish treason, repelled further objections to this exceptional law.[1]

At length, at the end of 1801, the act, being no longer defensible on grounds of public danger, was suffered to expire, after a continuous operation of eight years. But before its operation had ceased, a bill was introduced to indemnify all persons who since the 1st of February, 1793, had acted in the apprehension of persons suspected of high treason. A measure designed to protect the ministers and their agents from responsibility, on account of acts extending over a period of eight years, was not suffered to pass without strenuous opposition. When extraordinary powers had first been sought, it was said that ministers would be responsible for their proper exercise; and now every act of authority, every neglect or abuse, was to be buried in oblivion. It was stated in debate that some persons had suffered imprisonment for three years, and one for six, without being brought to trial; and Lord THURLOW could "not resist the impulse to deem men innocent until tried and convicted." The measure was defended, however, on the ground that persons accused of abuses would be

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[3] Blackstone says: "It has happened in England during temporary suspensions of the statute, that persons apprehended upon suspicion have suffered a long imprisonment, merely because they were forgotten." *Comm.* iii. (Kerr) 146.

[1] In 1798 there were only seven votes against its renewal. In 1800 it was opposed by twelve in the Commons, and by three in the Lords. It was then stated that twenty-nine persons had been imprisoned, some for more than two years, without being brought to trial.—Parl. Hist., xxxiv. 1484.

unable to defend themselves, without disclosing secrets dangerous to the lives of individuals and to the state. Unless the bill were passed, those channels of information would be stopped, on which government relied for guarding the public peace. When all the accustomed forms of law had been departed from, the justification of the executive would indeed have been difficult; but evil times had passed, and a veil was drawn over them. If dangerous powers had been misused, they were covered by an amnesty. It were better to withhold such powers than to scrutinize their exercise too curiously; and were any further argument needed against the suspension of the law, it would be found in the reasons urged for indemnity.

For several years, the ordinary law of arrest was free from further invasion. But on the first appearance of popular discontents and combinations, the government resorted to the same ready expedient for strengthening the hands of the executive, at the expense of public liberty. The suspension of the *Habeas Corpus* Act formed part of Lord SIDMOUTH'S repressive measures in 1817, when it was far less defensible than in 1794. At the first period, the French Revolution was still raging; its consequences no man could foresee; and a deadly war had broken out with the revolutionary government of France. Here, at least, there may have been grounds for extraordinary precautions. But in 1817, France was again settled under the Bourbons; the revolution had worn itself out; Europe was again at peace; and the state was threatened with no danger but domestic discontent and turbulence.

Again did ministers, having received powers to apprehend and detain in custody persons suspected of treasonable practices, and, having imprisoned many men without bringing them to trial, seek indemnity for all concerned in the exercise of these powers, and in the suppression of tumultuous assemblies. Magistrates had seized papers and arms, and interfered with meetings, under circumstances not warranted even by the exceptional powers intrusted to them: but having acted in good faith for the repression of tumults and sedition, they claimed protection. This bill was not passed without strenuous resistance. The executive had not been idle in the exercise of its extraordinary powers. Ninety-six persons had been arrested on suspicion. Of these, forty-four were taken by warrant of the secretary of state; four by warrant of the privy council; the remainder on the warrants of magistrates. Not one of those arrested on the warrant of the secretary of state, had been brought to trial. The four arrested on the warrant of the privy council, were tried and acquitted. Prisoners had been moved from prison to prison in chains; and after a long, painful, and even solitary imprisonment, discharged on their recognizances, without trial.

Numerous petitions were presented, complaining of cruelties and hardships ; and though falsehood and exaggeration characterized many of their statements, the justice of inquiry was insisted on, before a general indemnity was agreed to. "They were called upon," said Mr. Lambton, "to throw an impenetrable veil over all the acts of tyranny and oppression that had been committed under the Suspension Act. They were required to stifle the voice of just complaint—to disregard the numerous petitions that had been presented, arraigning the conduct of ministers, detailing acts of cruelty unparalleled in the annals of the Bastile, and demanding full and open investigation." But on behalf of government, it appeared that in no instance had warrants of detention been issued, except on information upon oath ; and the attorney-general declared that none of the prisoners had been deprived of liberty for a single hour, on the evidence of informers alone, which was never acted on, unless corroborated by other undoubted testimony.

Indemnity was granted for the past ; but the discussions which it provoked, disclosed, more forcibly than ever, the hazard of permitting the even course of the law to be interrupted. They were not without their warning. Even Lord SIDMOUTH was afterwards satisfied with the rigorous provisions of the Six Acts ; and, while stifling public discussion, did not venture to propose another forfeiture of personal liberty. And happily, since his time, ministers, animated by a higher spirit of statesmanship, have known how to maintain the authority of the law, in England, without the aid of abnormal powers.

In Ireland, a less settled state of society—agrarian outrages—feuds envenomed by many deeds of blood—and dangerous conspiracies, have too often called for sacrifices of liberty. Before the Union, a bloody rebellion demanded this security ; and since that period, the *Habeas Corpus* Act has been suspended on no less than six occasions. The last Suspension Act, in 1848, was rendered necessary by an imminent rebellion, openly organized and threatened ; when the people were arming, and their leaders inciting them to massacre and plunder. Other measures in restraint of crime and outrage have also pressed upon the constitutional liberties of the Irish people. But let us hope that the rapid advancement of that country in wealth and industry, in enlightenment and social improvement, may henceforth entitle its spirited and generous people to the enjoyment of the same confidence as their English neighbors."